CRP 382/2007
BEFORE
HON'BLE MR. JUSTICE B.D.AGARWAL

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28.11.2007

Heard Mr. P.K.Kalita, learned counsel for the petitioners and Mr .A.Mazumdar, learned senior for the respondents No.1 and 2/ decree-holders.

By way of this application under Article 227 of the Constitution of India, the judgment debtors in Title Execution Case No. 45 of 2006 are ass ailing the order dated 04.10.2007 passed by the learned Munsiff No.1, Barpeta re jecting the objections raised by the judgment-debtors under section 47 of the Co de of Civil Procedure.

Shri Kalita, learned counsel for the petitioners submitted that although the decree for khas possession was also sought for in the suit, along with other relief, the court of Munsiff decreed the suit only for right, title a nd interests over two Lechas of land in Dag No. 107 under K.P. Patta No.530 of Barpeta Town. However, no order for giving khas possession of the suit-land was ordered.

As per the order of the Civil court, the land was partitioned an d a new dag number and patta number have been allotted to the decree-holders bei ng Dag No. 397 and Patta No. 897. After the decree, the plaintiff has started ex ecution of the decree including taking khas possession of the land.

According to Shri Kalita, under the garb of the decree, the respondents are attempting to occupy the excess land, which should not be allowed by this co urt.

It is the established principle of law that the decree has to be executed in the letter and spirit. At the same time, the executing court is not powerless to decide about the area of the land, which is covered under the decr ee.

Shri A.Mazumdar, learned senior counsel for the respondents subm itted that a writ of delivery of possession has been issued strictly in terms of the decree. Hence, this court should not interfere in the execution process. Be sides this, it was also submitted that the petitioners/judgment-debtors have alr eady admitted in the executing court about the right of the decree-holder to get possession of the land by way of filing Petition No. 325 dated 20.6.2007. In th is petition, the judgment-debtors sought for some time to dismantle the structur es so as to give possession of the land.

Upon hearing the learned counsel for both the sides, I am of th e opinion that the objection of the judgment-debtors can be sorted out if the le arned Munsiff obtain a report from the Bailiff if the decree-holders are in poss ession of 2 Lechas of land covered under Dag No. 397 under Patta No. 897. If the report is in the affirmative, the decree shall be declared as satisfied. Ho wever, if the possession of the decree-holders is not confirmed upon the afore said land, the decree should be executed without any kind of delay. This exercis e should be completed preferably within a period of one month from the date of r eceipt of this order. It is made clear that if the judgment-debtors interfere in the execution proceeding, appropriate action, as permitted under law, shall be taken.

With the aforesaid directions, the revision application stands d isposed of.

JUDGE

OS